(3)

C. S. 105/—

Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 469 /2004

APPELLANTS DEFENDANTS :

1. Krishna Devi aged about 60 years Wd/O late Shyam Lal Sharma.
2. Dinesh Sharma aged about 30 years, S/o Shyam Lal Sharma.
3. Ku. Arati Sharma, aged about 25 yeafs D/o Shyam Lal Sharma.

All R/o. Jorapara, Jawahar Nagar Ward, near Phool Chowk Market, Raipur, Tah. & Distt. Raipur.

P.R. No. 2023/04
Presented by Shri M. L. Bhadun
dated 10-9-04

VERSUS

RESPONDENTS PLAINTIFFS :

1. Smt. Sheela Dave aged about 70 years, Wife of Durga Shankar Dave.
2. Prashant Dave aged about 32 years S/o Durga Shankar Dave.

Both resident of - Jorapara, Jawahar Nagar Ward, Raipur, Tah. & Distt. Raipur (C.G.).

C.L. Markandey
Advocate
H.C. C.G.
Reg. No. 01/27/02

SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE .

(APPEAL VALUED AT Rs. 922/- AS VALUED IN THE TRIAL COURT BY PLAINTIFFS)

(30)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 469/2004

Appellants : Krishna Devi & Others

Versus

Respondents : Smt. Sheela Dave & Others.

Shri Malay Kumar Bhaduri counsel for the appellants.

JUDGMENT

(Passed on 07-3-2005)

The instant second appeal has been filed by the appellanst/defendants against the impugned judgment and decree dated 17/07/2004 passed by 1st Addl. District Judge, Raipur in Civil Appeal No. 12-A/2002 by which the judgment and decree dated 03/07/2001 passed by Second Civil Judge Class II, Raipur in Civil Suit No. 26-A/98 has been confirmed.

The case of the plaintiffs before the trial Court was that the suit accommodation was purchased by the plaintiffs on 31/05/95 and before purchase, the plaintiffs were residing in the ground floor of the said house as tenant whereas in the first floor thereof the defendants were also residing as tenant. The intimation regarding transfer of property was given by the plaintiffs to the defendants on 07/02/96. Thereafter the defendants started paying rent to the plaintiffs at the rate of Rs. 16/- per month. The plaintiff No.2 required the suit premises for his own residential purpose as

he was not getting married only because of the non-availability of the sufficient accommodation. During the pendency of the suit, the plaintiff No.2 got married and after marriage he was residing with his wife at Raipur. However, as the accommodation in which plaintiff No.2 was residing was insufficient for residential purposes and they did not have any other alternative reasonably suitable accommodation available in the city of Raipur, a registered notice was sent to the defendants terminating their tenancy with effect from 28/02/1997. Even then the defendants did not vacate the house and as such the suit for eviction and damages @ Rs. 10/- per day was filed by the plaintiffs.

The defendants denied the plaint allegations and stated that the suit accommodation is not required by plaintiff No.2 bonafidely as he being in the employment of Bhilai Steel Plant as Electrical Engineer, has been allotted a quarter at Bhilai and he visits Raipur once in a week. It was further stated by the defendants that there is a house of father of the plaintiffs at Pandari Tarai ward Raipur and as such the plaintiff No.2 has no requirement of the alternative independent accommodation in the city of Raipur. The allegation made by the plaintiffs to the effect that the suit accommodation has become unsafe for human dwelling was also denied by the defendants.

The suit filed by the plaintiffs was decreed by the trial Court recording a finding that the plaintiff No. 2 required the suit accommodation bonafidely for his residence as he has no alternative suitable accommodation in Raipur town. However the contention of the plaintiffs that the suit accommodation has become unsafe and for this reason the same is required to be repaired, has been held to be not proved. Thus the suit for eviction was decreed and damages of Rs. 10/- per day was awarded to the plaintiffs from the date of decree.

The appeal preferred by the defendants was dismissed by the lower appellate Court. The findings recorded by both the Courts below are as under:

1. That the family of the plaintiff No.2 consists of his wife, children and mother and he had only two rooms in his possession and looking to the family of the plaintiffs the contention that the present accommodation is insufficient for his residence and that they require some additional accommodation for their residence, is bona fide.

2. The Courts below decreed the suit of the plaintiffs on the ground that even the defendant Krishna Devi has admitted in her statement that suit accommodation is bonafidely required by the plaintiffs. This apart, the witness No. 2 examined on behalf of the defendants has also admitted in his deposition regarding the bona fide requirement of the suit accommodation by the plaintiffs.

Thus the Courts below have arrived at the conclusion that the suit accommodation is required by the plaintiffs bonafidely for their residence.

Learned counsel for the appellants has vehemently argued that the plaintiff No. 2 is employed in Bhilai Steel Plant and he is in possession of the quarter allotted by his employer at Bhilai and therefore the contention of the plaintiffs that he requires the suit accommodation bonafidely, is not correct and as such both the Courts below ought to have dismissed the suit of the plaintiffs on the ground of availability of alternative reasonably suitable accommodation.

However, the contention of the appellants / defendants can not be accepted as the plaintiffs has establish by adducing evidence that he is residing at Raipur alongwith his mother and wife and he needs the suit accommodation bonafidely for his residential purposes at Raipur.

Provision of Section 12(1) (e) of the C.G. Accommodation Control Act has been enacted for the benefit of the landlord which means the lesser irrespective of whether he is a resident of the city or town concerned or not, the plaintiffs can not be deprived of the right to get the tenant evicted from the residential premises when they are in bona fide

requirement of the same. There is no reason as to why a person who owns residential accommodation should not get it for his own use nearly because he is working out of the city or town concerned. The Act makes no such classification and therefore, in my view there is no warrant for limiting the provisions of Section 12(1) (e) of the C.G. Accommodation Control Act in the manner suggested by the counsel for the appellants.

Thus, the concurrent findings of fact recorded by both the courts below that the suit accommodation is bonafidely required by the plaintiff No. 2 for his residential purpose and further that they do not have any other reasonably suitable accommodation for the purpose in the city or town concerned, is based on objective analysis of the evidence and material available on record and as such the same do not require any interference by this Court.

In view of the aforesaid discussion this Court of the view that there is no force in the appeal, inasmuch as no substantial question of law is involved for its adjudication and as such the same is liable to be dismissed.

In the result the appeal is dismissed.

Sd/-
Dhirendra Mishra
Judge

Jyotishi